IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 156 of 2005.

Date of decision: 03.01.2006.

Gulshan Kumar & Ors. ... Petitioners

Versus

Smt. Chanchala Devi … Respondent

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the petitioners: Mr. N.K. Thakur, Advocate.

For the respondent: Nemo.

V.M. Jain, J. (Oral):

This revision petition has been filed by the defendants – petitioners against the order dated 29.10.2005 passed by the District Judge, vide which the appeal filed by Smt. Chanchala Devi, plaintiff, was allowed, the order dated 23.4.2005 passed by the trial Court was set aside and the plaintiff was granted ad interim injunction during the pendency of the suit.

The facts which are relevant for the decision of the present revision petition are that Smt. Chanchala Devi, plaintiff, had filed a suit for permanent injunction against the defendants restraining them from causing any interference whatsoever, changing the existing nature and character and raising any sort of construction or ousting the plaintiff from

[1]Whether reporters of Local Papers may be allowed to see the judgment?

the suit land by taking forcible possession thereof. It was alleged by the plaintiff that the suit land was owned and possessed by one Prem Nath and other co-sharers, who had sold 2/5th share measuring 0-08-42 Sq. Mtrs. to the plaintiff vide registered sale deed dated 9.1.1989 and the plaintiff was put in possession over the suit land. It was alleged that the defendants were threatening to interfere on the suit land by raising construction or ousting the plaintiff by taking forcible possession. Along with the suit, the plaintiff also filed an application under Order 39 Rules 1 & 2 read with Section 151 C.P.C., for the grant of ad interim injunction.

The suit and the ad interim injunction application were contested by the defendants by taking up the plea that the plaintiff was neither the owner nor in possession of the suit land and further alleging therein that infact, the plaintiff had purchased the suit land from one Prem Nath in the year 1989 and she had agreed to sell the suit land to the defendants vide agreement to sell dated 12.5.1989.

After hearing both sides and perusing the record, the learned trial Court dismissed the ad interim injunction application holding that the plaintiff was not entitled to the grant of ad interim injunction, because the suit was not maintainable. However, the appeal filed by the plaintiff was accepted by the learned District Judge, the order of the learned trial Court was set aside and the ad interim injunction was granted in favour of the plaintiff, holding that the plaintiff had a strong prima facie case in her favour and the plaintiff would suffer irreparable loss in case the ad interim injunction was not granted. Aggrieved against the order passed by the learned District Judge, the defendants filed the present revision petition in this Court.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this revision petition and the same is liable to be dismissed. Admittedly, the plaintiff is the owner of the suit land and at the most, the defendants could be said to be prospective purchasers, by virtue of agreement dated 12.5.1989. There is nothing on the record to show that the defendants have filed any suit for specific performance of the aforesaid agreement. So far as the possession in respect of the suit land is concerned, admittedly, the suit land is lying vacant. In this view of the matter, in my opinion, the possession shall be deemed to be that of the owner. As referred to above, the plaintiff is admittedly the owner of the suit property and prima facie, she would be deemed to be in possession thereof, especially when nothing has come on the record to show as to how and in what manner, the defendants were in possession over the suit property. In my opinion, the learned District Judge had exercised judicial discretion while accepting the appeal of the plaintiff and granting ad interim injunction in favour of the plaintiff and not fault could be found with the same. This is especially so, when admittedly the plaintiff is the owner of the suit property and the defendants are at the most prospective purchasers and keeping in view that the suit land is lying vacant, in such eventuality, the possession will go with the ownership.

In view of the detailed discussion above, in my opinion, there is no merit in this revision petition and the same is hereby dismissed.

(V.M. Jain),
Judge

January 03, 2006
(BSS)